

June 30, 2017

Washington Update

This Week in Congress

- **House** – The House passed the “Disaster Assistance Support for Communities and Homeowners Act of 2017” (H.R. 1684); the “Coast Guard Improvement and Reform Act of 2017” (H.R. 1726); the “Veterans Expanded Trucking Opportunities Act of 2017” (H.R. 2547); the “Protecting Access to Care Act of 2017” (H.R. 1215); “No Sanctuary for Criminals Act” (H.R. 3003); and “Kate’s Law” (H.R. 3004).
- **Senate** – The Senate invoked cloture on the nomination of **Neomi Rao** to be **Administrator of the Office of Information and Regulatory Affairs (OIRA)** at the Office of Management and Budget, and adopted S.Res.210, a technical measure to advance the Russia and Iran sanctions bill.

Next Week in Congress

- **House** – The House is in recess until July 11.
- **Senate** – The Senate is in recess until July 10.

TAX

Ways and Means Chairman Brady: Expect Additional Tax Hearings in July

Key Points:

- *House Ways and Means Committee hearing topics will include a hearing focused on small business and another on individuals and families.*
- *The Committee has not announced whether hearings will be held in the Tax Policy Subcommittee or by the full Committee.*

This week, House Ways and Means Committee Chairman Kevin Brady (R-TX) told reporters that the Committee will hold two additional tax reform hearings during July. According to Brady, the hearing topics will include “one focused on the benefits to small business of tax reform, and the second one focused on the benefits to families and individuals.” The Committee held their first two tax reform hearings of the current Congress in May.

Those hearings explored the topics of economic growth and another on the border adjustment tax. Brady did not, however, comment on whether the hearings would be conducted by the full committee or at the subcommittee level.

Senate Finance Committee Staff Director Nominated for Treasury Position

Key Points:

- *Senate Finance Committee staff director Chris Campbell nominated to serve as the Treasury Department’s assistant secretary for financial institutions*
- *Jay Khosla, Committee’s current policy*

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director, announced as new committee staff director

The White House announced its intention to nominate Senate Finance Committee staff director Chris Campbell to serve as Assistant Secretary of the Treasury for Financial Institutions. Campbell's portfolio is expected to include financial regulation, tax reform and debt ceiling negotiations. In a statement, Senate Finance Committee Chairman Orrin Hatch (R-UT) said "[w]hether it was working to reform our nation's entitlement programs, overhauling the tax code, or breaking down barriers to trade, Chris's counsel has always been thoughtful and strategic." He added that "I'm proud of the work he has done for me...[and] Treasury will be lucky to have him."

Additionally, Hatch announced that Jay Khosla, the committee's current policy director and chief health counsel, will succeed Campbell as staff director. Khosla previously worked for Senator John McCain's (R-AZ) 2008 presidential campaign, the Senate Budget Committee, and former Senate Majority Leader Bill Frist (R-TN).

Administration Still Undecided on Proper Tax Treatment for Passthrough Businesses

Key Points:

- *Gary Cohn, National Economic Council (NEC) Director says that Administration still deciding on proper tax treatment for passthrough businesses*
- *President Trump tax plan released in April called for single 15 percent tax rate for both passthroughs and corporations*

This week, National Economic Council (NEC) Director Gary Cohn told a group of energy trade association heads that the administration has not yet decided on how to how to tax

passthrough businesses. Passthrough businesses include limited liability companies (LLCs), partnerships and S Corporations. Cohn said "[w]e've gotten an enormous amount of feedback in the pass-through space...[but] [w]e still haven't figured out what exactly to do with passthroughs." According to Cohn, "[t]he personal side is relatively easy and the corporate side is relatively easy," but "there's a big group in the middle, passthrough entities, which is really tough, but that group is really important."

The tax plan that the White House released in April floated a 15 percent rate for both corporations and small businesses. Secretary of the Treasury Steven Mnuchin said at the time that the Administration would make sure that there are rules preventing wealthy people from creating passthroughs to avoid taxes.

Cohn reiterated the administration's goal of having tax-reform legislation enacted this year, saying that it will be the White House's top agenda item starting in about the middle of August. He contended that "[w]e firmly believe that when American citizens get their first paycheck in 2018, they've got to see more income."

Congressional Budget Office: Treasury out of Cash by Early to mid-October

Upcoming Dates

July 28: August Recess scheduled to begin

September 30: FY 2017 ends and FAA, SCHIP, and NFIP authorizations expire

Fall 2017: CBO's projections of when Treasury exhausts extraordinary measures

December 31, 2017: Title VII of FISA expires

Key Points:

- *Congressional Budget Office (CBO) estimates that debt limit will need to be increased by “early to mid-October.”*

According to a new Congressional Budget Office (CBO) [report](#) released on June 29, Congress will need to raise the nation’s debt limit by early to mid-October to avoid defaulting on loan payments. In the report, CBO said lower-than-expected tax receipts this year have contributed to an acceleration of the time for Congress to act. The CBO report warned that failure to increase the debt limit will lead to delays of payments for the government’s programs and activities, a default on its debt obligations, or both.

Previously, Secretary of the Treasury Steven Mnuchin had urged lawmakers to pass a clean debt limit increase before the August recess, though he has later testified that the federal government would be able to meet its obligations through September.

Technically, the Department of the Treasury has already exceeded the statutory debt limit. On March 16, 2017, Congress reset the debt ceiling at \$19.8 trillion, but no new borrowing authority was put in place to surpass it. Since then, the Department of the Treasury has been taking “extraordinary measures,” or workarounds to pay the bills without technically adding to the debt amount.

For more information about tax issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Nick Karellas contributed to this section.

FINANCIAL SERVICES**House Appropriations Panel Approves Financial Services Bill***Key Points:*

- *The spending bill includes several provisions from the Financial CHOICE Act, such as repeal of the FSOC authority to designate non-banks, Volcker Rule, and inclusion of the CFPB in the appropriations process.*

On June 29, the House Appropriations Committee’s Financial Services and General Government Subcommittee held a [markup](#) and approved by voice vote the Fiscal Year (FY) 2018 Financial Services and General Government appropriations [bill](#).

Chairman Tom Graves (R-GA) said the bill provides \$20.231 billion in funding, a 6 percent decrease from the FY 2017 enacted level. He expressed support for the financial reforms in the bill to reduce regulations and make changes to the Consumer Financial Protection Bureau (CFPB). Ranking Member Mike Quigley (D-IL) expressed opposition to the bill being considered, suggesting that it does not adequately promote small business creation, consumer protection, and good governance. He commended the increase in budget for the Financial Crimes Enforcement Network (FinCEN), but opposed the cuts to other areas such as the Small Business Administration (SBA), the Internal Revenue Service (IRS), and the Community Development Financial Institution (CDFI) Fund. He said the bill includes a variety of policy riders and 88 pages of text from the “Financial CHOICE Act” ([H.R. 10](#)) to repeal key provisions of the Dodd-Frank Act (DFA) and “weaken” the CFPB. He suggested that such changes should be considered in the authorizing committees, not the Appropriations Committee.

Among the provisions folded into bill from the “Financial CHOICE Act” are repeals of the Office of Financial Research, the authority of

the Financial Stability Oversight Council to designate non-bank financial companies, and the Volcker Rule. The bill would remove the CFPB's authority to regulate small-dollar credit and restrict the use of mandatory arbitration, and bring the CFPB into the Congressional appropriations process and remove its authority to regulate unfair, deceptive, or abusive acts and practices (UDAAP). The bill would also prohibit the Securities and Exchange Commission (SEC) from enacting regulations to require disclosures of political contributions or mandate the use universal proxy ballots.

The bill would fund the SEC at \$1.6 billion, which is \$3 million below the FY 2017 enacted level. The bill also includes a prohibition on using funds for the implementation of the Executive Order Establishing a Federal Flood Risk Management Standard.

Senate Banking Committee Discusses Housing Finance Reform

Key Points:

- *Chairman Mike Crapo (R-ID) stated that housing finance reform is a top priority during this Congress.*
- *Chairman Crapo suggested there is bipartisan support for retaining the TBA market and a 30 year fixed mortgage, the need for private capital to stand in front of a government guarantee, the need for strong capital to withstand downturns; and a level playing field for small lenders.*

On June 29, the Senate Banking Committee held a [hearing](#) on "Principles of Housing Finance Reform." The hearing focused on proposals to reform the housing finance system, the need to end the conservatorship of Fannie Mae and Freddie Mac, affordable housing, and the need to maintain access to

credit. Chairman Mike Crapo (R-ID) explained in a [statement](#) that reforming the housing finance system is one of his key priorities this Congress. He suggested there are a number of principles that he believes share bipartisan support such as: preserving the to-be-announced (TBA) market and an affordable, accessible 30-year fixed rate mortgage; the need for multiple levels of taxpayer protection standing in front of any government guarantee, including down payments, loan-level private insurance, and substantial, robust, loss-absorbing private capital comparable to the amount of capital maintained by global systemically important banks; that strong capital is essential to ensure that guarantors and other market participants can withstand market downturns; and that small lenders have a level playing field when accessing the secondary market. Crapo noted several additional reform proposals such as securitizing conventional mortgages with a "Ginnie Mae wrap."

Ranking Member Sherrod Brown (D-OH), in a [statement](#), suggested protecting small lender access to the secondary market is an important area of bipartisan agreement. He suggested the federal government should focus on what is good for Main Street, and he stated current proposals do not focus enough on how to break down the barriers that still exist in the mortgage market for communities of color or on providing continued access to credit in rural areas.

When asked what proposals for housing finance reform the Committee should look at, Mortgage Bankers Association President and Chief Executive Officer David Stevens, Housing Policy Council of the Financial Services Roundtable President Edward DeMarco, and Center for Responsible Lending President Michael Calhoun agreed on the need for: an explicit catastrophic guarantee; private

capital to stand in advance of that guarantee; the guarantee to be pre-funded; and access to the secondary market for lenders of all sizes.

House Panel Holds Hearing on Equity Market Structure

Key Points:

- *Subcommittee Chairman Bill Huizenga (R-MI) and Ranking Member Carolyn Maloney (D-NY) stressed the need for a comprehensive review of equity market structure.*
- *The Subcommittee discussed a wide range of market structure issues including the maker-taker model and access fees, tick size, NMS plan governance, market data, order routing, ETFs and the Consolidated Audit Trail.*

On June 27, the House Financial Services Committee's Capital Markets, Securities and Investments Subcommittee held a [hearing](#) entitled "U.S. Equity Market Structure Part I: A Review of the Evolution of Today's Equity Market Structure and How We Got Here." The Committee received testimony from: Capital Group Senior Vice President and Global Trading Manager Matt Lyons; Themis Trading LLC Partner Joseph Saluzzi; Global Trading Systems (GTS) Chief Executive Officer Ari Rubenstein; Charles Schwab Senior Vice President Jeff Brown; New York Stock Exchange President Thomas Farley; The Investors Exchange (IEX) Chief Executive Officer Brad Katsuyama; Chicago Board of Options Exchange President and Chief Operating Officer Chris Concannon; Instinet Head of Global Trading Research John Comerford; and NASDAQ Executive Vice President and Global Head of Equities Tom Wittman.

Chairman Bill Huizenga (R-MI) said the equity markets have become essential to Main Street, as companies need capital to grow, innovate

and create jobs. He said the equity markets have been shaped by four major regulations implemented by the Securities and Exchange Commission (SEC): (1) the order handling rules, (2) Regulation Alternative Trading System (ATS); (3) decimalization; and (4) Regulation National Market System (NMS). He pointed to the role played by technology in the market, including algorithms and high frequency traders (HFTs). He said investors have benefitted from the developments in the market, and that the markets are recognized as the deepest, most liquid and competitive markets in the world. However, he suggested there is room for improvement, suggesting that the markets are overly complex and fragmented. He noted that there have also been technological glitches in the market. He stressed the need for a comprehensive review of equity market structure.

Ranking Member Carolyn Maloney (D-NY) said the U.S. has the deepest, most liquid and most efficient capital markets in the world, but Congress should continue to work to improve them. She said price competition has improved, though some argue that this has come at the expense of market fragmentation. She stated that there is a fine line between too many and too few trading venues. Maloney said Regulation NMS showed that even small changes in market structure can have large impacts, stressing the need for changes to be backed by data. She commended the SEC for conducting a tick size pilot program. She said the pilot got off to a "bumpy start," but she expressed interest in its result. She said NMS plan committees handle key parts of the system, such as market data feeds, but do not include the sell side brokers or buy side investors and these participants do not get a vote on how the plans are operated.

Maloney said some have suggested that the maker-taker model creates conflicts of interest for broker-dealers. She noted the SEC's Equity Market Structure Advisory Committee (EMSAC) recommended that the SEC adopt a pilot program on whether execution improves with lower rebates. She asked if the SEC or the exchanges should design such a pilot program. Saluzzi said the SEC should design the pilot, suggesting that allowing the exchanges to do so would be like putting "the fox in the henhouse." He suggested a better model than maker-taker would be a flat fee model, noting that IEX already uses such a model. Farley agreed that the SEC should design the pilot through the rulemaking process rather than delegating it to the self-regulatory organizations (SROs). Wittman said the SEC is looking at access fees the wrong way. He stated that different rebates may be needed to bring small and mid-sized companies to the public market. Representative Stephen Lynch (D-MA) also expressed support for conducting a maker-taker pilot program.

Huizenga asked about the benefits of allowing broker-dealers and asset managers to have voting representation on NMS plan committees. Brown said this would greatly increase the expertise on those committees. Lyons said non-SRO members and their views should be represented. Wittman said broker-dealers participate in the advisory committees for the NMS plans, and he added that improvements to the Securities Information Processor (SIP) reduced latency extensively. He suggested that broker-dealers and asset managers have adequate transparency in the NMS plans. Concannon said SIP plan governance has improved dramatically, but CBOE is willing to consider buy- and sell-side participation in the NMS plan. Farley said the SEC can either make rules or delegate to NMS plans, suggesting that the SEC has delegated

more in recent years. He suggested that this has not been a positive development in some cases and has engendered ill will towards the SROs. Representative French Hill (R-AR) asked if the dealer community should be involved in management of the SIP. Farley noted that NYSE includes them in their advisory committees. Katsuyama said inclusion in the advisory committees is inadequate representation.

Representative Bill Foster (D-IL), Representative French Hill (R-AR), and Representative Tom Emmer (R-MN) asked about market data. Jeff Brown said the exchanges argue that the SIP has already been modernized, but he suggested that these improvements occurred only because the SIP failed. He said the exchanges will never improve the SIP so much that it cannibalizes their proprietary data feeds. Rubenstein said investors use the SIP because it is the least expensive option, but added that more improvement is needed.

Representative Brad Sherman (D-CA) asked why IEX does not charge for market data while other exchanges do. Katsuyama said IEX includes the cost of market data in their trading fee. He said market data fees are interconnected with the system of paying out rebates for order flow. He said the net revenue from trading continues to decline for exchanges, so they are looking for revenue from areas like market data and connectivity. He said exchanges charge fees to make up for the cost of rebates.

Hill raised concerns with the growth of exchange traded funds (ETFs). Rubenstein said ETFs bring great efficiency to investors, but he observed that the move from active to passive management in recent years has not been tested in a period of higher volatility. He stressed the

need to ensure that industry participants are prepared to deal with volatility in those instruments. Hill expressed concern that there is an “accident waiting to happen.” He expressed concern with public policy decisions driving people towards ETFs as if they are “sanctuary” of low risk and unlimited upside.

Representative Tom Emmer (R-MN) asked about the current liquidity for the top 100 stocks listed on NASDAQ. Wittman said there is a tremendous amount of liquidity for the top 100 stocks, and 30 mil rebates are not necessary for these stocks. He stated that rebates, tick sizes, and off-exchange trading affect small cap stock liquidity. Emmer asked how “intelligent” tick sizes compares to the tick size pilot. Wittman said the pilot examines the use of three tick size buckets, but he stressed the need to be more intelligent about tick sizes, while also examining the connection between rebates and tick size. Concanon said the one-size-fits-all regime for tick sizes does not work well. He said the market works very well for large companies, but adjustments are needed for smaller companies. He stated that the tick size pilot takes a simple approach and only adjusts tick sizes in one direction.

Senate Agriculture Committee Approves CFTC Chairman Nomination

Key Points:

- *The Committee approved the nomination of J. Christopher Giancarlo to be Chairman of the CFTC by a roll call vote of 16-5.*

The Senate Agriculture Committee favorably reported the nomination of J. Christopher Giancarlo to be Chairman of the Commodity Futures Trading Commission (CFTC) by a vote of 16-5. The members voting in opposition to the nomination were Senators Sherrod Brown (D-OH), Joe Donnelly (D-IN), Patrick Leahy

(D-VT), Kirsten Gillibrand (D-NY), and Chris Van Hollen (D-MD). The Senate will still need to vote on Giancarlo’s nomination before he is confirmed. Giancarlo is currently serving as the Acting Chairman of the Commission.

CFTC Commissioner Sharon Bowen recently announced her intention to resign as a member of the Commission. President Donald Trump has nominated Brian Quintenz and Dawn DeBerry Stump to serve as commissioners, but has not yet nominated anyone to fill Bowen’s seat or the other open seat.

House Financial Services Subcommittee Holds Hearing on the Federal Reserve’s Impact on Main Street and Retirees

Key Points:

- *Dr. Alex J. Pollock and Dr. Paul Kupiec suggested that the Federal Reserve needs to halt the practice of paying interest on excess reserves.*
- *Dr. Norbert Michel suggested that the Federal Reserve balance sheet needs to be unwound, the Federal Reserve needs a minimal foot print in the markets, they need to focus on monetary policy, and benchmark to a rule.*

On June 28, the House Financial Services Committee’s Monetary Policy and Trade Subcommittee held a [hearing](#) entitled “The Federal Reserve’s Impact on Main Street, Retirees, and Savings.” The hearing focused on the current monetary policy of the Federal Reserve, the payment of excess reserves, the Federal Reserve’s balance sheet, inflation, and the dual mandate of the Federal Reserve. Chairman Andy Barr (R-KY) suggested that instead of strengthening fundamentals to build the economy up, the Federal Reserve engineered a “financial reflation” from the top down. Ranking Member Gwen Moore (D-WI) stressed that retirement savings is an important

issue for Americans. She stated that ten thousand people turn 65 years old every day and are retiring with “grossly” insufficient savings. She declared that retirees need the fiduciary rule, which makes advisors put their clients’ interests ahead of their own.

Barr, Representative Roger Williams (R-TX), and Representative Brad Sherman (D-CA) raised concerns over the Federal Reserve’s payments of interest on excess reserves. American Enterprise Institute Resident Scholar Dr. Paul Kupiec stated that paying interest on all reserves is problematic. He stated that until excess reserves decrease to normal levels, the Federal Reserve has to take action to control the short term interest rate. R Street Institute Distinguished Senior Fellow Dr. Alex J. Pollock stated getting away from interest on reserves would help to get back to the federal funds policy. When asked whether the growing balance sheet of the Federal Reserve should be concerning, Kupiec stated that the Federal Reserve is “stuck” using short term interest rates due to the risk of impacting the stock markets. Pollock stated the Federal Reserve cannot now sell off its portfolio investments without moving the market. He suggested they need to get back to market set interest rates. Representative Tom Emmer (R-MN) asked what other reforms are needed to the Federal Reserve. The Heritage Foundation Senior Research Fellow Dr. Norbert Michel suggested that the balance sheet needs to be unwound, the Federal Reserve needs a minimal footprint in the markets, they need to focus on monetary policy, and they need to benchmark monetary policy to a rule.

Upcoming Hearings and Events

July 12

Federal Reserve: The House Financial Services Committee will hold a hearing to

discuss the Federal Reserve’s semi-annual Monetary Policy Report. Federal Reserve Chair Janet Yellen is scheduled to testify.

For more information about financial services issues you may [email](#) or call Joel Oswald at 202-659-8201. Alex Barcham and Rebecca Konst contributed to the articles.

ENERGY & ENVIRONMENT

Energy and Commerce Committee Approves Pipeline, Hydropower, Ozone, and Other Bills

Key Points:

- *On June 28, the House Energy and Commerce Committee favorably reported legislation on energy infrastructure, brownfields remediation, energy emergency preparedness, and ozone regulations.*
- *The parties were divided on the pipeline and ozone bills, although other legislation received bipartisan support.*

On June 28, the House Energy and Commerce Committee held a [markup](#) and approved eight bills:

- Legislation to “amend the Federal Power Act with respect to the criteria and process to qualify as a qualifying conduit hydropower facility” ([H.R. 2786](#)), which was introduced by Representative Richard Hudson (R-NC). The Committee favorably reported H.R. 2786 by voice vote.
- The “Promoting Cross-Border Energy Infrastructure Act” ([H.R. 2883](#)), introduced by Representative Markwayne Mullin (R-OK), which would “establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities

- for the import and export of oil and natural gas and the transmission of electricity.” As described in a Committee [background memo](#), the legislation would: (1) replace “the Presidential Permit process, established through Executive Order, with a uniform and transparent process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity”; and (2) authorize the Federal Energy Regulatory Commission (FERC) “to issue a certificate of crossing for border-crossing facilities consisting of oil or natural gas pipelines and the Secretary of Energy for border-crossing facilities consisting of electric transmission facilities.” The Committee favorably reported H.R. 2883, as amended, by a recorded vote of 31-20, with Representatives Gene Green (D-TX) and Kurt Schrader (D-OR) joining Republicans in voting in support.
- The “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act” ([H.R. 2910](#)), introduced by Representative Bill Flores (R-TX), which would “provide for Federal and State agency coordination in the approval of certain authorizations under the Natural Gas Act.” The Committee favorably reported H.R. 2910 by a roll call vote of 30-23, with Representative Leonard Lance (R-NJ) voting in opposition and Green and Schrader voting in support.
 - The “Hydropower Policy Modernization Act of 2017” ([H.R. 3043](#)), introduced by Representative Cathy McMorris Rodgers (R-WA). The Committee favorably reported H.R. 3043, as amended, by voice vote.
 - The “Enhancing State Energy Security Planning and Emergency Preparedness Act of 2017” ([H.R. 3050](#)), introduced by Energy Subcommittee Chairman Fred Upton (R-MI), which would “amend the Energy Policy and Conservation Act to provide Federal financial assistance to States to implement, review, and revise State energy security plans...” The Committee favorably reported H.R. 3050, as amended, by voice vote.
 - The “Brownfields Enhancement Economic Redevelopment and Reauthorization Act of 2017” ([H.R. 3017](#)), introduced by Representative David McKinley (R-WV), which would amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to reauthorize and improve the Brownfields program. The Committee favorably reported H.R. 3017 by voice vote.
 - The “Nuclear Waste Policy Amendments Act of 2017” ([H.R. 3053](#)), introduced by Environment Subcommittee Chairman John Shimkus (R-IL), which would amend the Nuclear Waste Policy Act of 1982. The Committee favorably reported H.R. 3053, as amended, by a roll call vote of 49-4, with Representatives Jan Schakowsky (D-IL), Ben Ray Lujan (D-NM), Eliot Engel (D-NY) and David Loebsack (D-IA) voting against the bill.
 - The “Ozone Standards Implementation Act of 2017” ([H.R. 806](#)), introduced by Representative Pete Olson (R-TX), which would “facilitate efficient State implementation of ground-level ozone standards.” As described in the

Committee’s background memo, the legislation would: (1) “provide additional time for states and localities to implement new ozone standards, and address other practical challenges under the National Ambient Air Quality Standards (NAAQS) program”: and (2) “facilitate more efficient implementation of ozone standards, and the NAAQS program generally.” On October 26, 2015, the Environmental Protection Agency (EPA) published a [final rule](#), lowering the NAAQS for ground-level ozone to 70 parts per billion (ppb). The Committee favorably reported H.R. 806, as amended, by a roll call vote of 29-24.

Murkowski and Cantwell Reintroduce Energy Legislation

Key Points:

- *The Energy and Natural Resources Committee Chair and Ranking Member introduced bipartisan energy legislation that the Senate approved, and was subject to conference negotiations, in 2016.*
- *The legislation is slated to go directly to the Senate floor, although the leadership has not yet announced a date to begin debate in the chamber.*

On June 29, Senate Energy and Natural Resources Committee Chairman Lisa Murkowski (R-AK), and Ranking Member Maria Cantwell (D-WA), introduced the “Energy and Natural Resources Act of 2017 (ENRA)” ([S. 1410](#)). The bill includes provisions that the Senate approved in 2016 in the “Energy Policy Modernization Act” ([S. 2012](#)), and were subject to conference negotiations with the House of Representatives. The two chambers were

unable to agree on a final energy bill last year before the conclusion of the 114th Congress.

As described in a [press release](#), the bill includes energy provisions addressing:

- **“Efficiency** – Energy efficiency provides significant benefits for consumers, the economy, and the environment. The provisions in this title include agreements on everything from energy savings performance contracts to the reauthorization of the weatherization assistance and state energy programs. The efficiency of our homes, buildings, and manufacturing facilities all stand to increase as a result of it.”
- **“Infrastructure** – We depend on electric transmission lines, pipelines, and other infrastructure to transport energy from where it is produced to where it is used. This title will help modernize our electric grid, enhance cybersecurity safeguards, streamline pipeline permitting, facilitate LNG exports, and ensure a qualified, well-trained workforce.”
- **“Supply** – To provide for a long-term, American-made energy supply that is increasingly abundant, affordable, clean, diverse, and secure, this title focuses on the development of renewable resources, traditional energy, and non-fuel minerals alike. The responsible development of American resources – from hydropower to rare earth elements – will provide benefits to our nation for decades to come.”
- **“Accountability** – Practical reforms are needed to advance

innovation, protect electric reliability, and ensure the proper stewardship of taxpayer dollars. Among the provisions in this title are the reauthorization of certain energy-related components of the America COMPETES Act, reforms for the Department of Energy's loan guarantee program, and the repeal of numerous provisions within the U.S. Code that are outdated or redundant."

The press release notes that S. 1410 "was placed directly on the Senate Calendar for expedited floor consideration." Therefore the Energy and Natural Resources Committee will not debate the bill and consider amendments prior to Senate floor debate.

Trump Caps "Energy Week" with Address Highlighting Exports

Key Point:

- *The President announced new policy actions and initiatives in a speech on energy on Thursday.*

On June 29, President Donald Trump delivered an [address](#) on energy policy, part of the Administration's series of events comprising "Energy Week". In his speech, the President emphasized the potential for U.S. energy exports, declaring, "We will export American energy all over the world, all around the globe." He also announced six policy initiatives and actions by the Administration:

- "...revive and expand our nuclear energy sector...which produces clean, renewable and emissions-free energy";
- "...address barriers to the financing of highly efficient, overseas coal energy plants";

- "...approve construction of a new petroleum [products] pipeline to Mexico...";
- "...an agreement [by Sempra Energy] to begin negotiations for the sale of more American natural gas to South Korea";
- "...approve two long-term applications to export additional natural gas from the Lake Charles LNG terminal in Louisiana"; and
- open additional offshore areas to oil and gas development.

Energy Briefs

Key Points:

- *The President submitted an additional nomination to fill one of the vacancies on the Federal Energy Regulatory Commission.*
- *The Energy Information Administration held its annual Energy Conference.*

Energy policy developments this week included:

- **FERC Nominee:** On June 28, President Trump announced that he would nominate Richard Glick to the pending open Democratic slot on the Federal Energy Regulatory Commission (FERC). On May 10, Trump [submitted two nominations](#) for FERC: Neil Chatterjee, energy policy advisor to Senate Majority Leader Mitch McConnell (R-KY); and Pennsylvania Public Utility Commission Commissioner Robert Powelson. The Senate Energy and Natural Resources Committee approved these nominations on June 6. FERC has operated without a quorum since February 3, 2017, when former Chairman Norman Bay resigned leaving

the Commission with only two commissioners. In addition, Commissioner Collette Honorable [announced](#) on April 28, that she would not seek another term when her current term expires on June 30, 2017. She has also declared that she would resign from the Commission once her term expires today.

- **EIA Conference:** The Energy Information Administration (EIA) held its annual Energy Conference this week. Topics discussed included: “U.S. exports of crude oil and petroleum products”; “Renewable finance and project costs”; “The energy-water nexus and induced seismicity”; “The future of nuclear power”; “Gasoline fuel quality and octane supply”; “Big data and energy information”; “Natural gas infrastructure to serve growing markets”; “Coal and natural gas competition”; and “Human behavior and energy use in buildings”. EIA has posted [presentations](#) from the Energy Conference.

Upcoming Hearings and Events

July 12

Pending Legislation: The Senate Environment and Public Works Committee will hold a [business meeting](#) to consider pending legislation.

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Alex Barcham contributed to this report. Updates on energy and environment issues are also available on [twitter](#).

DEFENSE

HASC and SASC Markup NDAA's

Key Points:

- *This week, both Armed Services Committees marked up NDAA's that would authorize Pentagon funding above the BCA caps*
- *Possibly, both the House and Senate could consider their bills before the August recess*

The Armed Services Committees marked up and reported out their FY 2018 National Defense Authorization Acts. Both packages would authorize more funding than allowed by the “Budget Control Act of 2011” for FY 2018 and more than the Trump Administration requested. Both packages include significant acquisition reforms and boost the uncapped Overseas Contingency Operations (OCO) accounts above the Pentagon’s request.

HASC

On June 28, the House Armed Services held a markup of the FY 2018 National Defense Authorization Act (NDAA) (H.R. 2810) and reported out the bill with only one Member voting against the package (i.e. Representative Tulsi Gabbard (D-HI)). The Committee’s [summary](#) explained that the bill “authorizes funds for base budget requirements of \$631.5 billion, including a \$28.5 billion increase for essential readiness recovery above the President’s budget request...[and] addresses important readiness shortfalls neglected by the President’s request, including: \$7.9 billion for Aviation Readiness, \$5.9 billion for increased Naval presence, \$5.7 billion for Ground Forces, \$2.3 billion for facilities maintenance, and \$2.5 billion for Missile Defense.” The package would fund uncapped Overseas Contingency Operations (OCO) accounts at

\$74.6 billion, which is \$10 billion more than the Administration's request.

In its [summary](#), with respect to acquisitions reform, the Committee claimed that:

- The FY18 proposal includes the third installment of the committee's acquisition reform initiative, which will further streamline bureaucracy, drive efficiency through competition, and give the Pentagon the tools it needs to make better business decisions.
 - The first of the major reform elements is to add oversight to service contracts. In fiscal year 2015, the Pentagon spent \$274 billion through contracts, including big-ticket weapon systems like the Ford Class aircraft carrier and the F-35 fighter jet. But, 53 percent (\$144 billion) of this sum was actually spent on services – everything from lawn mowing on military bases to maintaining equipment to hiring specialized experts and administrative support.
 - The second reform would improve the way the Pentagon buys commercial-off-the-shelf goods, ranging from bottled water to treadmills or even MRI machines. Today, the Department has two options for purchases: through the DOD contracting process or from the General Services Administration (GSA) schedule at the prices set there.
 - Finally, the Chairman's proposal will reform contract auditing by focusing it where it can do the most good for the

taxpayers. The Defense Contract Audit Agency (DCAA) primarily focuses on two types of audits: forward-pricing and incurred cost. Forward pricing audits review the cost of labor, supplies, and overhead to inform the appropriate price range for a contract being negotiated. They provide real value to the taxpayer. The incurred cost audits go back and look at whether the costs charged to the government were reasonable and permissible under the contract.

Other notable features of H.R. 2810 include:

- The Chairman's proposal incorporates the work of Strategic Forces Chairman Mike Rogers (R-AL) and Ranking Member Jim Cooper (D-TN) to establish a new U.S. Space Corps as a separate military service within the Department of the Air Force by 2019. The Chairman's proposal also establishes a U.S. Space Command as a new sub-unified command within U.S. Strategic Command.
- Chairman Thornberry's proposal enhances congressional oversight of sensitive military cyber operations and cyber weapons by promoting greater transparency and congressional accountability for some of the most classified elements of our national defense. As offensive and defensive cyber capabilities evolve, it is imperative to establish clear standards, processes, and procedures for notification to Congress of sensitive operations to assure the conduct of appropriate oversight.

- The proposal fully funds the 2.4% pay raise our troops are entitled to under law while blocking the President’s ability to reduce troop pay. It also extends special pay and bonuses for servicemembers.
- Chairman Thornberry’s Mark makes key investments not provided for in the President’s Budget Request. While readiness shortfalls will take many years to correct, these initiatives will begin to recover lost readiness and begin rebuilding the force.
- The Chairman’s Proposal provides for a robust Afghanistan Security Forces Fund to support our Afghan allies who have suffered significant losses in the fight against the Taliban and terrorist organizations. The fund provides for enhancements in the Afghan Air Force’s fixed and rotary wing fleet and supports the expansion of the Afghanistan Special Security Forces. At the same time, the proposal also provides tools to support President Ghani’s anti-corruption efforts. The proposal also directs the Secretary of Defense to provide an Afghanistan strategy that will look beyond the next five years to describe the trajectory of U.S. efforts in Afghanistan and assess the timeline and total resources necessary to achieve U.S. objectives.
- The Chairman’s proposal provides for U.S. support to partner forces engaged in combatting the ISIS through Operation INHERENT RESOLVE. This support has been critical to creating the momentum necessary to curtail ISIS expansion, recover territory in Iraq and Syria, and refit partner forces after difficult combat missions. The committee, however, directs the Department of Defense provide a

comprehensive, regional strategy for Syria that describes U.S. long-term objectives in the wake of active combat against ISIS.

SASC

Also on June 28, the Senate Armed Services Committee marked up and reported out its NDAA. Although, as in year’s past, the markup was closed and the bill text has not been released. In its [press release](#), the Committee explained that “277 amendments—offered by both Republican and Democratic members—were considered and adopted...[and the Committee] voted unanimously to report the bill.”

The Committee claimed that “FY ‘18 NDAA authorizes a base defense budget of \$632 billion...[and] [I]together with the Administration’s request of \$8 billion for other defense activities, the NDAA supports a total defense budget of \$640 billion in funding for the Department of Defense and the national security programs of the Department of Energy.” The Committee stated that “[t]he bill also authorizes \$60 billion for OCO...[and] [i]n sum, the NDAA supports a national defense topline of \$700 billion.

In a [summary](#), the Committee claimed that its bill does the following:

- Authorizes critical funding for the Department of Defense (DOD) to rebuild a ready and capable force by increasing maritime capacity, procuring combat aircraft and munitions, and reducing the shortfall in end strength.
- Ensures the long-term viability of the All-Volunteer Force by improving the quality of life of the men and women of the total force (Active Duty, National Guard, and Reserves), their families,

and DOD civilian personnel through fair pay and policies as well as continued reform of the military health system.

- Continues a comprehensive overhaul of the acquisition system to ensure that our men and women in uniform have the equipment they need to succeed and drives innovation by allocating funds for advanced technology development and next-generation capabilities to ensure America's military dominance.
- Advances our ability to protect our allies, partners, and friends.
- Enhances the capability of the U.S. Armed Forces and the security forces of allied and partner nations to defeat ISIS, al Qaeda, and other violent extremist organizations.
- Improves the ability of the U.S. Armed Forces to counter threats in the information domain, including space, cyber, and electronic warfare.
- Reduces the threats from nuclear weapons and materials by strengthening nonproliferation programs, modernizing our nuclear deterrent, and ensuring the safety, security, and reliability of our nuclear stockpile, delivery systems, and infrastructure.
- Terminates troubled or redundant programs and activities, identifies efficiencies, and reduces unnecessary defense expenditures to make the best use of taxpayer dollars.
- Promotes aggressive and thorough oversight of the Department's programs and activities to ensure compliance with relevant laws and regulations and proper stewardship of taxpayer dollars.

SASC Sends Shanahan Nomination To Floor

Key Points:

- *After providing more fulsome answers to written questions, the Trump Administration's Deputy Secretary-designate was approved by SASC*

This week, the Senate Armed Services Committee approved the nomination of Patrick Shanahan to be the Deputy Secretary of Defense, sending his nomination to the Senate floor after a rocky confirmation hearing last week. Shanahan submitted revised answers to written questions the Committee had put to him before the hearing. Notably, Shanahan provided fuller responses to questions regarding Russian encroachment in Ukraine and reported violations of the Intermediate-Range Nuclear Forces Treaty (INF), two issues that were points of contention last week.

FY 2018 DOD Appropriations Marked Up

Key Points:

- *The House Appropriations Committee reports its FY 2018 DOD funding package that includes a repeal of the September 11 AUMF*
- *The bill would provide greater funding than allowed for FY 2018's defense cap per the BCA*

This week, the FY 2018 Department of Defense (DOD) Appropriations Act was marked up and reported out both the Defense Subcommittee and House Appropriations Committee. In its [press release](#) after the full Committee markup, the Committee asserted that “[t]he legislation provides a total of \$658.1 billion for the DOD...[which] includes \$584.2 billion in discretionary funding – an increase of \$68.1 billion above the FY 2017 enacted level and \$18.4 billion above the President’s Defense

budget request.” The Committee noted that “[t]he bill also provides \$73.9 billion in Overseas Contingency Operations (OCO)/Global War on Terrorism (GWOT) funding.” The Committee also released the draft [Committee Report](#).

At the full Committee markup, two amendments were adopted:

- Defense Subcommittee Chairwoman Kay Granger (R-TX) – The manager’s amendment makes technical and non-controversial changes to the bill and report. The amendment was adopted on a voice vote.
- Representative Barbara Lee (D-CA) – The amendment repeals the Authorization of Use of Military Force (AUMF) that was enacted after 9/11 (Public Law 107-40; U.S.C. 1541 note). It would go into effect 240 days after enactment of the bill. The amendment was adopted on a voice vote.

In its [summary](#), the Committee explained the bill:

- **Military Personnel and Pay** – The legislation includes \$138.3 billion – \$133 billion for base requirements and \$5.3 billion for OCO/GWOT requirements – to provide for 1,324,000 active-duty troops and 822,900 Guard and Reserve troops. The bill includes \$1 billion above the request for additional end strength, and fully funds a 2.4 percent pay raise for the military.
- **Operation and Maintenance** – Included in the legislation is \$241 billion – \$192 billion for base requirements and \$49 billion for OCO/GWOT requirements – for operation and maintenance. Funding for base requirements is \$3.1 billion above the request and \$24.1 billion

above fiscal year 2017. This funding supports key readiness programs to prepare our troops for combat and peacetime missions, including flight time and battle training, equipment and facility maintenance, and base operations. Within this amount, the bill includes \$1 billion above the request to fill readiness shortfalls, \$500 million above the request to invest in facility sustainment, restoration, and modernization programs, and \$16.6 billion total for depot maintenance. This funding will help rebuild our forces to ensure our troops have the training and equipment they need.

- **Research and Development** – The bill contains \$84.3 billion – \$82.7 billion for base requirements and \$1.6 billion for OCO/GWOT requirements – for research, development, testing, and evaluation of new defense technologies. Funding for base requirements is \$10.3 billion above the fiscal year 2017 level, and will help to support current military operations and to prepare our nation to meet a broad range of future security threats. Specifically, this funding will support research and development of: the F-35 Joint Strike Fighter; space security programs; the new Air Force bomber program; a next-generation JSTARS aircraft; the Ohio-class submarine replacement; Future Vertical Lift; the Israeli Cooperative Programs; and other important research and development activities, including those within the Defense Advanced Research Projects Agency (DARPA).
- **Equipment Procurement** – The legislation provides a total of \$149 billion – \$132.5 billion for base requirements and \$16.5 billion for OCO/GWOT requirements – for

equipment and upgrades. Funding for base requirements is \$18.6 billion above the request and \$24.1 billion above fiscal year 2017. These funds support our nation's military readiness by providing the necessary platforms, weapons, and other equipment our military needs to train, maintain the force, and conduct successful operations. For example, the bill includes: \$21.5 billion to procure 11 Navy ships, including funding for one carrier replacement, two DDG-51 guided missile destroyers, two Virginia-class submarines, and three Littoral Combat Ships; \$9.5 billion for 84 F-35 aircraft; \$1.8 billion for 24 F/A-18E/F Super Hornet aircraft; \$1.05 billion for 56 UH-60 Black Hawk helicopters; \$117.5 million for 12 MQ-1 Gray Eagle unmanned aerial vehicles; \$1.2 billion for 7 P-8A Poseidon aircraft; \$2.4 billion for 15 KC-46 tanker aircraft; \$348 million for 116 Stryker Double V-Hull upgrades; \$1.09 billion for the upgrade of 85 Abrams tanks; \$483 million for the upgrade of 145 Bradley fighting vehicles; \$332 million for the Israeli Cooperative Programs; \$298 million for the Evolved Expendable Launch Vehicle (EELV); \$100 million for National Guard High Mobility Multipurpose Wheeled Vehicle (HMMWV) recapitalization; and \$1 billion for the National Guard and Reserve Equipment Account.

- **Defense Health and Military Family Programs** – The bill contains \$34 billion for base requirements – \$150 million above the fiscal year 2017 enacted level and \$267 million above the request – for the Defense Health Program to provide care for our troops, military families, and retirees.

Specifically, the bill provides \$282 million for cancer research, \$125 million for traumatic brain injury and psychological health research, and \$277 million for sexual assault prevention and response. All of these funding levels represent increases above the President's request.

- **Reductions and Rescissions to Save Tax Dollars** – The bill reflects commonsense decisions to save taxpayer dollars where possible in areas that will not affect the safety or success of our troops and missions. Some of these savings include: \$1 billion from lower-than-expected fuel costs, \$345 million due to favorable economic conditions, and \$1.5 billion in savings from rescissions of unused prior-year funding.

For more information on defense issues you may [email](#) or call Michael Kans at 202-659-8201.

HEALTH

Senate Republicans Continue to Finalize Health Care Legislation

Key Points:

- *Senate Republicans had hoped to vote on the bill before the July 4 recess, but instead delayed consideration.*
- *Senate Majority Leader Mitch McConnell (R-KY) hoped to send draft text to the Congressional Budget Office by June 30.*

This week Senate Republicans had expected to vote on legislation to repeal and replace the "Patient Protection and Affordable Care Act" (ACA) (P.L. 111-148, 111-152). After failing to garner enough support for the "Better Care Reconciliation Act," Senate Majority Leader

Mitch McConnell (R-KY) announced a vote would not take place before the recess.

Both conservative and moderate Senators have expressed concern about the current draft of the bill. Last week, Senators Rand Paul (R-KY), Mike Lee (R-UT), Ted Cruz (R-TX), and Ron Jonson (R-WI) all came out against the bill soon after the draft text was released. They do not think the legislation goes far enough to repeal the ACA or help lower premiums. They have advocated for repeal of all the ACA's insurance regulations and utilizing high-risk pools for those with pre-existing conditions.

Moderate Republican Senators have expressed concern about the impact the legislation will have on coverage and Medicaid. Senator Susan Collins (R-ME) said she has "so many fundamental problems with the bill...that it's difficult for me to see how any tinkering is going to satisfy my fundamental and deep concerns about the impact of the bill." Senators Rob Portman (R-OH) and Shelley Moore Capito (R-WV), both from Medicaid expansion states, have pushed for a seven-year phase out of Medicaid expansion rather than the three years in the draft bill. They are also pushing for an additional \$45 billion in funding to address the opioid epidemic.

McConnell plans to send a broad outline of a new health care deal to the Congressional Budget Office by the end of this week to hopefully have a score ready when Senators return from recess. There have been reports the Senate may consider eliminating the plan to cut the capital gains tax rate on wealthy individuals and families and use those savings to provide more support for low-income Americans to purchase health insurance. There are also reports the next draft will include a provision allowing health savings accounts to be used for premiums.

CBO Releases Score for Senate Draft Bill

Key Points:

- *The Congressional Budget Office found the Senate bill would decrease the deficit by \$321 billion over 2017 to 2026 and increase the number of uninsured by 22 million by 2026.*
- *The nongroup market is expected to remain stable in most states and premiums are expected to be 30 percent lower by 2020.*

On June 26, the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) completed an [estimate](#) of the direct spending and revenue effects of the Better Care Reconciliation Act of 2017, a Senate amendment in the nature of a substitute to H.R. 1628. CBO and JCT estimate that enacting this legislation would reduce the cumulative federal deficit over the 2017-2026 period by \$321 billion. The largest savings would come from reductions in outlays for Medicaid. The largest increases in deficits would come from repealing or modifying tax provisions in the "Patient Protection and Affordable Care Act" (ACA) (P.L. 111-148, 111-152) that are not directly related to health insurance coverage such as the surtax on net investment income and repealing annual fees imposed on health insurers.

CBO and JCT estimate that in 2018, 15 million more people would be uninsured compared to current law. This number would reach 19 million by 2020, and by 2026, the Senate bill would increase the number of people who are uninsured to 22 million relative to current law.

CBO and JCT estimate that under the Senate bill, nongroup insurance markets would continue to be stable in most parts of the country. Average premiums for benchmark plans for single individuals when compared to

current law would be about 20 percent higher in 2018; about 10 percent higher in 2019; and 30 percent lower in 2020. Because the Senate bill would lower the actuarial value of plans to 58 percent, the share of services covered by the benchmark plan would be smaller. CBO and JCT estimate that for many lower-income people, net premiums paid under the Senate bill would be similar to current law, but plans would have higher deductibles and other cost-sharing requirements.

With less federal funds for Medicaid, states would need to commit more of their own resources or reduce spending by cutting payments to providers, eliminating optional services, or restricting enrollment. In a longer-term [analysis](#) of Medicaid spending requested by Democrats, CBO found Medicaid spending would be 26 percent lower in 2026 and 35 percent lower in 2036 when compared to CBO's extended baseline.

FDA Announces New Initiatives for Generic and Orphan Drugs

Key Points:

- *The Food and Drug Administration published a list of off-patent, off-exclusivity branded drugs without approved generics and a new policy to expedite review of generic drug applications.*
- *The Food and Drug Administration announced a new strategic plan to eliminate the existing orphan designation request backlog.*

On June 27, the Food and Drug Administration (FDA) [announced](#) two steps it will be taking to increase competition in the prescription drug market. First, the FDA published a [list](#) of off-patent, off-exclusivity branded drugs without approved generics. The agency will continue to refine and update the list to ensure continued transparency. It also is

implementing a new [policy](#) to expedite the review of generic drug applications where there is limited competition. The FDA is revising this policy based on data that indicate consumers see significant price reductions when there are multiple FDA-approved generics available. These steps are part of the FDA's Drug Competition Action Plan announced in May.

On June 29, the FDA [announced](#) a new strategic plan to eliminate the existing orphan designation request backlog. FDA Commissioner Scott Gottlieb has committed to eliminating the backlog within 90 days and responding to all new requests for designation with 90 days of receipt. The FDA will deploy a Backlog SWAT team comprised of senior reviewers with expertise in orphan drug designation. It will also implement a new streamlined Designation Review Template to increase consistency and efficiency. To ensure a timely response to new requests, the FDA will reorganize review staff to improve efficiencies; leverage expertise across FDA's medical product centers; and establish a new FDA Orphan Products Council to address scientific and regulatory issues.

Upcoming Hearings and Events

July 6

HSAs: The American Enterprise Institute will hold a discussion on "Unbundling the Benefit for Better Health: A Broader Role for Health Savings Accounts."

July 7

Medicaid: The Alliance for Health Policy and the Commonwealth Fund will hold a discussion on "Understanding What's Next for Medicaid."

For more information about healthcare issues you may [email](#) or call Nicole Ruzinski or George Olsen at 202-659-8201.

TRANSPORTATION AND INFRASTRUCTURE

FAA Reauthorizations Marked Up and Reported Out

Key Points:

- *Both chambers' committees of jurisdiction markup and report out their FAA reauthorizations*
- *Again, the House bill looks to spin off the FAA's ATC operations whereas the Senate bill does not*

This week, both committees of jurisdiction marked up and reported out their Federal Aviation Administration (FAA) reauthorizations. Like the extensions marked up by each committee last year, the House package has language to privatize the FAA's air traffic control (ATC) operations, a position now supported by the White House, while the Senate bill does not. It appears unlikely that the House would prevail on this issue given the opposition from Senators who are concerned about the impact of the general aviation community and many Senate Democrats who oppose privatization on principle. Additionally, like last year, it is not apparent whether there are a sufficient number of House Members willing to support spinning off the FAA's ATC operations.

House Transportation and Infrastructure

On June 27, the House Transportation and Infrastructure Committee held a full committee [markup](#) and favorably reported the "21st Century Aviation Innovation, Reform, and Reauthorization Act (AIRRACT)" ([H.R. 2997](#)), as amended, by a recorded vote of 32 to 25.

Chairman Bill Shuster (R-PA) said H.R. 2997 is one of the most forward looking pieces of

legislation the Committee can pass. He said the bill is about the American taxpayer and about ending decades of wasteful spending on failed programs. He stressed the bill's focus is on improving the experience of the American, traveling public. He said the reforms included would improve the air traffic control (ATC) system's efficiency and safety. He argued it is time to get Washington out of the way of innovation and aviation. He said the U.S. has, for over a century, led the world in aviation. He argued this dwindling lead could disappear completely if the needed reforms contained in the bill are not passed. He explained the process behind bringing this bill to the Committee included six hearings and over 150 meetings. He stated the bill continues to gain momentum because Members are aware that this is not a partisan issue.

Ranking Member Peter DeFazio (D-OR) submitted letters from Representatives Grace Napolitano (D-CA) and Elijah Cummings (D-MD) expressing their opposition to the bill. He said the bill under consideration and FAA reauthorization is substantially agreed upon except for the provision calling for the privatization of the air traffic control system. He commended the recent progress of the FAA in rolling out advanced technologies as part of its NextGen program. He specifically highlighted the success of Federal Aviation Administration's (FAA) deployment of automatic dependent surveillance-broadcast (ADS-B) technology to cover the entire United States. He said airlines do want to spend the necessary money to update their planes to be able to operate within the new ADS-B system. He mentioned airlines have even called for a delay on the ADS-B adoption deadline – from 2020 to 2025. He argued only airlines can make their planes back off gates in the right order and schedule departures and arrivals appropriately. He said Airport and Airway

Trust Fund (AATF) should not be subjected to sequestration and his bill, the “Aviation Funding Stability Act” ([H.R. 2800](#)), would address funding problems presented in the underlying legislation. He stated he is fearful that handing over the ATC system to a private corporation would “mess up” the ongoing deployment of important FAA technologies.

Senate Commerce, Science, and Transportation

On June 29, the Senate Commerce, Science, and Transportation held a full committee [markup](#) and favorably reported the “Federal Aviation Administration Reauthorization Act of 2017” (S. 1405), as amended, by voice vote.

Chairman John Thune (R-SD) said the “FAA Reauthorization Act of 2017” – introduced with Ranking Member Bill Nelson (D-FL), and Senators Roy Blunt (R-MO) and Maria Cantwell (D-WA) – is bipartisan and a four-year bill that would authorize funding for the Federal Aviation Administration (FAA) and take many steps to enhance safety and improve the flying experience for American travelers. He stated “while most of this proposal is based on last year’s Commerce Committee bill, which ultimately passed the Senate by a vote of 95 to three, we have not been resting on last year’s laurels.” He said the bill contains many improvements to the 2016 bill and new provisions that respond to issues that have arisen in the last year. He said the legislation would address safety and privacy concerns related to drones, improve the aircraft certification process, increase consumer protections and aviation access, make critical safety improvements, and address general aviation safety and pilot protection issues. He explained the bill would also significantly increase funding under the Airport Improvement Program (AIP) without raising taxes. He said he is aware that some have noted

that this legislation does not include major reforms to the air traffic control (ATC) system, as have been proposed by Chairman Bill Shuster (R-PA) of the House Transportation and Infrastructure Committee and, more recently, the President. He remarked “I remain open-minded about the idea of moving the FAA’s ATC function into a not-for-profit, non-governmental body, but I also appreciate that sincerely-held concerns exist.” He added “I hope – and expect – that we will consider this proposal more fully as the bill advances beyond the Committee.”

Nelson said “we have worked towards this in a bipartisan way.” He noted there are still some outstanding issues but “we are trying to work through those.” He stated he believes the Senate FAA reauthorization is a good bill, but he welcomes the discussion of amendments. He said no matter what is happening in the House version of the bill – which calls for the privatization of the ATC system – it is clear that there is not broad support for the privatization proposal throughout the aviation industry, the Committee, nor the Senate. He said while the intentions of the proposal may be good, the proposal is a bad idea for the safety of travelers and taxpayers. He said the proposal would also have negative consequences on the U.S. economy and its national security. He argued a more promising path is the bill before the Committee. He said the legislation provides continuity for crucial FAA modernization efforts and includes improvements in drone safety and a number of new consumer protections for airline passengers. He observed the bill increases transparency and provides common-sense reforms that the traveling public both deserves and demands.

Nelson moved that the Thune-Nelson-Blunt-Cantwell [substitute amendment](#), as modified

and as further amended, be adopted by the Committee so that this package may serve as the base text for amendments and debate. The [package of amendments](#) was adopted by voice vote.

Self-Driving Cars Hearing

Key Points:

- *Using 14 draft bills as a starting point, a House Energy & Commerce Committee subcommittee looked at the policy issues surrounding the predicted rise of autonomous vehicles*
- *The roles of the federal and state governments in regulating or setting standards for self-driving cars are discussed*

On June 27, the House Energy and Commerce Committee's Digital Commerce and Consumer Protection Subcommittee held a [hearing](#) to discuss "Self-Driving Vehicle Legislation." The hearing focused on fourteen discussion drafts related to autonomous vehicles, the role of the federal government in autonomous vehicles, innovation, and state preemption. Topics discussed in the hearing included: (1) Auto ISAC; (2) Federal Role; (3) Innovation; (4) State Preemption; (5) NHTSA; (6) Exemptions; (7) Children Left in Cars; (8) Electric Cars; (9) Disabled Community; (10) Public Input; (11) Cybersecurity/ Data Protection; (12) Recalls; (13) Environmental Impacts; (14) Testing; (15) Highway Accidents; and (16) International Competition.

Chairman Robert Latta (R-OH) stated driving is an integral part of American lives. He stated everyone drives. He noted traffic fatalities are on the rise with 40,000 fatalities and 200,000 injuries last year. Latta stated one of the most important pieces for this issue is to develop the role of the federal government. He suggested the federal government should have

provenance over the safety of the entire vehicle and how it operates. He noted states and localities also have a role to play to enforce traffic laws and can provide incentives for early actors. He explained there cannot be cars which have to stop at state lines. Latta noted testing is happening in Europe, Japan and China and acting now ensures that the U.S. does not fall behind. He stated over the last year there have been 80 state bills and Congress needs to ensure a patchwork of state laws does not harm innovation and the consumer. Latta explained technology to improve everything is going through a period of innovation and this will be a focus of the Committee for years to come. He stated the first step will be to set broad guidelines for safety while not limiting innovation. Latta noted the industry will need a strong watchdog. He expressed the importance of stakeholder input in this issue and he noted he has an "open door policy." He stated this will not be the government requiring self-driving cars but ensuring that these are brought to the market in a safe manner.

Ranking Member Janice Schakowsky (D-IL) stated the fourteen bills represent the starting point for autonomous vehicle legislation. She stated the Democrats are willing to work on a package, but changes will be needed before she can provide her support. Schakowsky reiterated that safety must be the top priority for autonomous vehicle (AV) legislation. She noted the importance of testing, controls, and consumer confidence. She noted they need to consider the jobs which could be lost and the impacts on the economy. Schakowsky stated what is missing is a role of the National Highway Traffic Safety Administration (NHTSA) on autonomous vehicles. She noted AV might not comply with existing standards, and she suggested exceptions should only be a stopgap. She explained the Committee needs to figure out a way to move forward responsibly

while ensuring safety at every stage. She explained states are currently barred from regulating designs once NHTSA adopts a federal standard. Schakowsky stated there needs to be a framework for updating federal standards before discussing preemption. She stated some of the auto companies that have been pushing the hardest are the slowest adopters of safety innovations. Schakowsky noted there are many safety products that should be adopted like reminders for infants in rear seats. She expressed concern that NHTSA is not testifying because agency feedback is critical.

The George Washington University Law School Lerner Family Associate Dean for Public Interest and Public Service Law Alan Morrison stated each of these draft bills is a small piece of the problem. He stated these bills would create less safety and more problems. He stated there is no change to law needed to allow NHTSA to “get out of the way” of testing. Morrison noted the general prohibition for putting vehicles on the road without testing does not apply. He suggested states are allowed to regulate testing because NHTSA has no laws on testing. He stated the [“Let NHTSA Enforce Autonomous Vehicle Driving Regulations \(LEAD’R\) Act”](#) would expand current exemptions. He noted the LEAD’R Act would make it so states can only act if NHTSA does. He stated that is a major change in the law. Morrison stated the exemptions are not necessary for testing but are necessary for deployment. He noted these exemptions would cover thousands of vehicles and allow them on the road with no NHTSA oversight. He stated NHTSA will be able to say that none of the data these car companies are submitting can be seen by the public. He explained that means there will be no “guards” protecting the roads. He suggested someone other than NHTSA and the auto companies

need to have access to this testing data. Morrison noted there is greater preemption of state law, broader deployment exemptions, no clear standards for granting exemptions, and almost total secrecy about testing. He suggested there is a way forward but “this is not it.”

Consumer Union Policy Analyst Will Wallace stated Consumer Reports has looked at self-driving vehicles and he noted there is an opportunity for self-driving cars to make things safer. He urged the Subcommittee to embrace technological enhancements and innovations. Wallace recommended that exemptions be limited to equipment where automated technology can fully replace a driver’s role. He stated no exemption should be granted for crashworthiness or occupant protection. Wallace asserted NHTSA should be required to create a more formalized process for exemptions. He contended new measures should be in place for vehicles with level two or three driver automation as those can provide drivers a false sense of security and increase driver inattention. He suggested additional NHTSA research into human vehicle interfacing should be conducted. Wallace stated that safety data should be made public. He noted preliminary survey results indicate that only 13 percent of respondents would be secure with an autonomous car. He contended that there should be strong federal standards which do not supplant the role of the states. He noted the need for strong protections for data related to autonomous vehicles. He suggested NHTSA’s research and enforcement capabilities should be increased through expanded funding. He stated NHTSA should be able to act without delay on issues that pose serious danger.

FASTLANE Grant Program Repurposed By DOT

Key Points:

- *Possibly as part of a promised infrastructure proposal, the DOT renamed and set new priorities for a competitive FACT Act grant program*

This week, the Department of Transportation (DOT) renamed a competitive grant program created in the “Fixing America’s Surface Transportation (FAST) Act (P. L.114-94) and revised its objectives. The recasting of this discretionary funding stream designed to address the movement of freight may be of a piece in the Trump Administration’s infrastructure funding initiative. The DOT stated that its new “[Infrastructure For Rebuilding America \(INFRA\) Grants](#)” program will “make approximately \$1.5 billion available to projects that are in line with the Administration’s principles to help rebuild America’s crumbling infrastructure — a priority for this Administration.” However, these funds are contingent, in part, on future appropriations. The INFRA Grants program will replace the FASTLANE Grant program.

In the new [notice of funding opportunity](#) (NOFO) for the revised program, the DOT stated that “[t]he INFRA program provides Federal financial assistance to highway and freight projects of national or regional significance.” The DOT stated that “[t]o maximize the value of FY 2017-2018 INFRA funds for all Americans, the Department is focusing the competition on transportation infrastructure projects that support four key objectives..

- Supporting economic vitality at the national and regional level;
- Leveraging Federal funding to attract other, non-Federal sources of infrastructure investment, as well as accounting for the life-cycle costs of the project;

- Using innovative approaches to improve safety and expedite project delivery; and
- Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

In a [fact sheet](#) on the INFRA Grants Program, the DOT claimed that “[t]he current system is not working:

- Evidence has shown that, in the past, when some State and local governments receive and spend federal funding for infrastructure, they divert future funding away from key infrastructure needs towards other uses – leading to little or no net benefit to infrastructure. With nearly \$9.8 billion in funding requested in FY 2016 for FASTLANE, we need to take steps to get more bang for the buck. By getting more of our partners to use federal funding as a supplement — not a substitute — we seek to increase the amount of overall funding that goes to infrastructure.
- Many necessary projects get caught in red tape more related to the bureaucratic checking of a box than to protecting environmental and community outcomes.
- Oftentimes projects are launched without a real plan to account for future operations and maintenance costs for the life-cycle of the project — leading to the crumbling infrastructure that plagues our country today.

As explained in the previous Administration’s [NOFO](#), the “Nationally Significant Freight and Highway Projects (NSFHP) program, as established by the FAST Act, will provide

Federal financial assistance to freight and highway projects of national or regional significance.” The Obama Administration explained that “[t]he Department will also refer to NSFHP grants as Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) grants.” The Obama Administration explained:

The Department will prioritize projects that also enhance personal mobility and accessibility. Such projects include, but are not limited to, investments that better connect people to essential services such as employment centers, health care, schools and education facilities, healthy food, and recreation; remove physical barriers to access; strengthen communities through neighborhood redevelopment; mitigate the negative impacts of freight movement on communities; and support workforce development, particularly for disadvantaged groups, which include low-income groups, persons with visible and hidden disabilities, elderly individuals, and minority persons and populations. The Department may consider whether a project’s design is likely to generate benefits for all users of the proposed project, including nondriving members of a community adjacent to or affected by the project.

For more information on transportation issues you may [email](#) or call Michael Kans at 202-659-8201. Alex Hopkins, Rebecca Konst, and Henry Homans contributed to this section.

TECHNOLOGY

FISA Reauthorization Hearing

Key Points:

- *The Senate Judiciary Committee heard from two panels of experts on how to best reauthorize, and possibly restructure, the authority used by the NSA to surveil the communications of non-Americans outside the U.S.*

On June 27, the Senate Judiciary Committee held a [hearing](#) entitled “The FISA Amendments Act: Reauthorizing America’s Vital National Security Authority and Protecting Privacy and Civil Liberties”. This hearing focused on the tension between protecting American privacy and protecting American national security. The committee and witnesses focused on the issues surrounding Section 702 of the “Foreign Intelligence Surveillance Act of 1978” (FISA), proper implementation of oversight, and the necessity for a sunset clause.

[Chairman Chuck Grassley \(R-IA\)](#) stated the responsibility of the United States government is to keep Americans safe. He acknowledged that rights and liberties in the constitution must be maintained. He argued the FISA Court should ensure only appropriate individuals are subject to Section 702 procedures. He pointed to the success of the program in learning more about the tactics and plans of terrorist organizations. He cited the Heritage Foundation and their claim that Section 702 is a critical tool for American intelligence officials and that Congress should reauthorize Section 702. He said it was valuable to keep in mind the concerns relating to civil liberties but claimed that there has been no evidence of intentional abuse of Section 702. He underscored the importance of national security.

Ranking Member Dianne Feinstein (D-CA) said she fully supports the reauthorization of the “FISA Amendments Act of 2008” (P.L. 110-261), including Section 702, but only if a sunset provision is added. She explained that Congress should be able to review this program periodically. She stated the program produces critical foreign information to protect against terror and threats. She reiterated the fact that there has never been a finding of intentional abuse or any trace of illegitimate activity within the program. She proposed the idea of appointing a special outside council to the FISA court.

Deputy Assistant Attorney General For Intelligence Stuart J. Evans described the history of FISA and Section 702 to target foreigners and those located abroad. He noted that since 2008, the statute requires certifications from the Attorney General and the Director of National Intelligence to authorize targeting procedures and minimization rules. He detailed the rigorous and frequent oversight by all three branches of government; including the agencies themselves and the Department of Justice’s (DOJ) regular reviews. He said that error rates are very low and when they do exist, they are reported and collected.

Federal Bureau of Investigation (FBI) National Security Branch Executive Assistant Director Carl Ghattas emphasized how critical of an investigative tool Section 702 is for the FBI. He noted an example where a man from Trinidad posted online about planning an attack on Western interests, prompting attention from the FBI. He detailed how their investigation indicated he was a member of an ISIS network that used social media to distribute English language propaganda, and encouraged people to carry out attacks in Western areas. He

explained how names and addresses of military personnel were posted online. He credited Section 702 for not only revealing the propaganda information but also revealing information regarding his network and leading to the identification of other ISIS supporters. Ghattas explained how the FBI receives only a small fraction of the National Security Agency’s (NSA) collection of data. He said the FBI can only access Section 702 if it is relevant to a full pending investigation, but not in the preliminary stages of collection. He stated mandating that the FBI acquire a warrant would severely hamper FBI operations.

Brennan Center for Justice at New York University School of Law Liberty & National Security Program Co-Director Elizabeth Goitein said the government has used Section 702 authority to protect against terrorist plots. She expressed concern about excessive collection of information regarding American citizens. She said intelligence agencies need reforms to preserve the core of Section 702. She advocated for narrowing the scope of surveillance by requiring the government to obtain a warrant before searching Section 702 data for Americans’ communications and to have Congress codify the end of ABOUT collection.

Privacy and Civil Liberties Oversight Board Member Elisabeth B. Collins said the program has a limited scope and only authorizes the government to engage in telephone and internet communications of non-US persons located abroad. She stated queries are important for connecting the dots but raise serious privacy issues. She acknowledged the program is constitutional, but addressed concerns about ABOUT collection. She noted the rigorous oversight that Section 702 is subject to. She called for a “clean reauthorization” of Section 702.

Goodlatte and Conyers Press DNI On Section 702 Data

Key Points:

- *The Chair and Ranking Member of the House Judiciary Committee articulate their displeasure at the failure of ODNI and NSA to produce data on Americans swept up in Section 702 surveillance*
- *They renewed their demand for this data that will inform their reauthorization of Section 702*

On June 29, House Judiciary Committee Chairman Bob Goodlatte (R-VA) and Ranking Member John Conyers (D-MI) sent a [letter](#) to Director of National Intelligence Dan Coats to register their displeasure at Coats' failure to respond in a timely fashion to a Committee request for "a public estimate of the number of communications or transactions involving United States persons subject to Section 702 surveillance on an annual basis."

Goodlatte and Conyers noted that "both [the Office of the Director of National Intelligence (ODNI)] and the National Security Agency (NSA) worked with our staff to develop a methodology that would produce this information in a timely fashion." They remarked that "[i]n our last letter, we were explicit about our expectations...[and] [w]e asked for an update on your progress no later than April 24, 2017." Goodlatte and Conyers stated that "[w]e are now in receipt of your June 13 response to our letter...[and] [y]ou write, in pertinent part, that "after more than a year of studying the matter, it has become clear that NSA is unable to develop an accurate and meaningful methodology" to complete this project."

Goodlatte and Conyers stated that "our Committee has primary jurisdiction over the Foreign Intelligence Surveillance Act...[and] [i]n the ordinary course of business, we would be troubled by your decision to ignore our request for so long, without so much as an explanation for the delay." They contended that "[i]n this particular instance, our Members are actively debating the reauthorization of Section 702." Goodlatte and Conyers asserted that "[f]ailing to tell us that you will not deliver on this project—or even provide us with any meaningful advance notice of your testimony—is simply unacceptable."

Goodlatte and Conyers allowed that "[w]e appreciate that this project presents several technical challenges, and that it may be "infeasible" to provide us with exact figures." They stated "we request that you provide us with the following information, in classified form if necessary, no later than Friday, July 7, 2017:

- ODNI and NSA proposed several different methodologies for completing this project. Please provide us with copies of any statistical analysis undertaken with respect to any of these methodologies.
- You testified that completing this project would require a "diversion of critical resources." How did you determine what resources would need to be diverted? Please provide us with copies of any analysis of the cost of completing this project.
- To the extent that you have already attempted to implement one or more of these methodologies— even if you believe the results to be an inexact proxy for the exact number of U.S. persons swept into Section 702 collections—please provide us with copies of those results."

For more information on technology issues you may [email](#) or call Michael Kans at 202-659-8201. Caroline Barber and Nick Connolly contributed to this section.

This Week in Congress was written by Ryan Schnepf.